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6 | Attorneys for DEFENDANT PENTAGROUP FINANCIAL LLC.

11 JULIE VILLORENTE GRESHEM, } CASE NO. C08-02271PVT  
12 Plaintiff, } ACTION FILED: 05/01/2008  
13 v. }  
14 PENTAGROUP FINANCIAL, LLC., a } DEFENDANT PENTAGROUP  
15 Texas limited liability company, } LLC.'S ANSWER TO PLAINTIFF'S  
16 Defendant. } COMPLAINT

18 Defendant THE PENTAGROUP FINANCIAL, LLC (“Defendant”), for itself  
19 and for no other Defendant, answers Plaintiff’s Complaint as follows:

20       1.     Answering paragraph 1 of Plaintiff's Complaint, Defendant submits that  
21 the statute speaks for itself. Defendant denies that it violated the provisions of the  
22 Fair Debt Collection Practices Act ("FDCPA"), the Rosenthal Fair Debt Collections  
23 Practices Act ("RFDCPA") or the terms of any other statute. Defendant further  
24 denies that plaintiff has suffered or is entitled to any damages in any amount.

25       2.     Answering paragraph 2 of Plaintiff's Complaint, Defendant lacks  
26 sufficient information upon which to admit or deny the allegation contained therein  
27 and denies the allegations on that basis.

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1       3. Answering paragraph 3 of Plaintiff's Complaint, Defendant denies the  
2 allegations therein, and specifically that it violated the provisions of the FDCPA.

3       4. Answering paragraph 4 of Plaintiff's Complaint, Defendant lacks  
4 sufficient information upon which to admit or deny the allegation contained therein  
5 and denies the allegations on that basis. Further answering paragraph 4 of Plaintiff's  
6 Complaint, Defendant responds by denying that it violated the terms of the FDCPA.

7       5. Answering paragraph 5 of Plaintiff's Complaint, Defendant lacks  
8 sufficient information upon which to admit or deny the allegation contained therein  
9 and denies the allegations on that basis

10      6. Answering paragraph 6 of Plaintiff's Complaint, Defendant lacks  
11 sufficient information and knowledge as to plaintiff's residence. Defendant also  
12 lacks sufficient knowledge as to whether Plaintiff is a consumer as per the definition  
13 provided by the FDCPA and/or a debtor as per the terms of the RFDCPA. Defendant  
14 also doesn't have information related to whether Plaintiff is a senior citizen as per the  
15 terms of Cal. Civil Code 1761(f).

16      7. Answering paragraph 7 of Plaintiff's Complaint, Defendant states that  
17 the definition of "debt collector" requires the Defendant to assert a legal conclusion.  
18 Defendant admits the allegations related to its principal place of business. Defendant  
19 can be served for purposes of this lawsuit through counsel at Lewis Brisbois  
20 Bisgaard & Smith LLP.

21      8. Answering paragraph 8 of Plaintiff's Complaint, Defendant lacks  
22 sufficient information upon which to admit or deny the allegation contained therein  
23 and denies the allegations on that basis.

24      9. Answering paragraph 9 of Plaintiff's Complaint, Defendant admits the  
25 allegations therein. Defendant does not admit the legal effect of the terminology  
26 used such as, "consigned" "placed" or "transferred".

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1       10. Answering paragraph 10 of Plaintiff's Complaint, Defendant admits that  
2 it sent Plaintiff a letter. Defendant denies the remainder of the paragraph 10.

3       11. Answering paragraph 11 of Plaintiff's Complaint, Defendant states that  
4 the Exhibit speaks for itself.

5       12. Answering paragraph 12 of Plaintiff's Complaint, Defendant admits that  
6 Plaintiff attaches a copy of a letter from Defendant to Plaintiff's Complaint.

7       13. Answering paragraph 13 of Plaintiff's Complaint, Defendant states that  
8 it lacks sufficient information upon which to admit or deny the allegation contained  
9 therein and denies the allegations on that basis.

10       14. Answering paragraph 14 of Plaintiff's Complaint, Defendant admits that  
11 a letter is attached as Exhibit 2 to Plaintiff's Complaint.

12       15. Answering paragraph 15 of Plaintiff's Complaint, Defendant states that  
13 on May 9, 2009, an individual signed for the letter addressed to Pentagroup.

14       16. Answering paragraph 16 of Plaintiff's Complaint, Defendant states that  
15 it lacks sufficient information to admit that the document attached as Exhibit 3 is a  
16 true and correct copy.

17       17. Answering paragraph 17 of Plaintiff's Complaint, defendant denies the  
18 allegations therein. Defendant further submits that the allegation contains a legal  
19 conclusion.

20       18. Answering paragraph 18 of Plaintiff's Complaint, Defendant denies the  
21 allegations therein.

22       19. Answering paragraph 19 of Plaintiff's Complaint, Defendant denies the  
23 allegations therein.

24       20. Answering paragraph 20 of Plaintiff's Complaint, Defendant states that  
25 it currently lacks sufficient information to admit or deny the allegations therein.

26       21. Answering paragraph 21 of Plaintiff's Complaint, Defendant states that  
27 it lacks sufficient information to admit or deny the allegations therein.

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1       22. Answering paragraph 22 of Plaintiff's Complaint, Defendant states that  
2 it lacks sufficient information to admit or deny the allegations therein.

3       23. Answering paragraph 23 of Plaintiff's Complaint, Defendant denies the  
4 allegations therein.

5       24. Answering paragraph 24 of Plaintiff's Complaint, Defendant states that  
6 it lacks sufficient information to admit or deny the allegations therein.

7       25. Answering paragraph 25 of Plaintiff's Complaint, Defendant admits that  
8 Plaintiff is alleging a cause of action based upon an alleged violation of the FDCPA.

9       26. Answering paragraph 27 of Plaintiff's Complaint, Defendant states that  
10 it lacks sufficient information to admit or deny the allegations therein and denies the  
11 allegations on that ground.

12       27. Answering paragraph 28 of Plaintiff's Complaint, Defendant states that  
13 the statute speaks for itself.

14       28. Answering paragraph 29 of Plaintiff's Complaint, Defendant states that  
15 the statute speaks for itself.

16       29. Answering paragraph 30 of Plaintiff's Complaint, Defendant denies all  
17 allegations therein.

18       30. Answering paragraph 31 of Plaintiff's Complaint, Defendant denies all  
19 allegations therein.

20       31. Answering paragraph 32 of Plaintiff's Complaint, Defendant denies all  
21 allegations therein.

22       32. Answering paragraph 33 of Plaintiff's Complaint, Defendant denies all  
23 allegations therein.

24       33. Answering paragraph 34 of Plaintiff's Complaint, Defendant admits that  
25 Plaintiff is alleging a cause of action based upon the terms of the RFDCPA.

26       34. Answering paragraph 36 of Plaintiff's Complaint, Defendant states that  
27 it lacks sufficient information to admit or deny the allegations therein and denies the  
28 allegations on that ground

35. Answering paragraph 38 of Plaintiff's Complaint, Defendant states that the statute speaks for itself.

36. Answering paragraph 39 of Plaintiff's Complaint, Defendant denies all allegations therein.

37. Answering paragraph 40 of Plaintiff's Complaint, Defendant denies all allegations therein.

38. Answering paragraph 41 of Plaintiff's Complaint, Defendant denies all allegations therein.

39. Answering paragraph 42 of Plaintiff's Complaint, Defendant denies all allegations therein.

40. Answering paragraph 43 of Plaintiff's Complaint, Defendant denies all allegations therein.

41. Answering paragraph 44 of Plaintiff's Complaint, Defendant denies all allegations therein.

42. Answering paragraph 45 of Plaintiff's Complaint, Defendant denies all allegations therein.

## **FIRST AFFIRMATIVE DEFENSE**

1. As a separate, affirmative defense, Defendant alleges that the Complaint, and each and every purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action.

## **SECOND AFFIRMATIVE DEFENSE**

2. As a separate, affirmative defense, Defendant alleges that the alleged actions of Defendant were proper and did not violate any provisions of 15 U.S.C § 1692 et. seq.

### **THIRD AFFIRMATIVE DEFENSE**

3. As a separate, affirmative defense, Defendant alleges that at all times mentioned in the Complaint, Defendant acted lawfully and within its legal rights, with a good faith belief in the exercise of that right, and in the furtherance of a

1 legitimate business purpose. Further, Defendant acted in good faith in the honest  
 2 belief that the acts, conduct and communications, if any, of the Defendant were  
 3 justified under the circumstances based on information reasonably available to these  
 4 answering Defendant.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 4. As a separate, affirmative defense, Defendant alleges that the alleged  
 7 actions of the Defendant were not accompanied by actual malice, intent or ill will.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 5. As a separate, affirmative defense, Defendant allege that Defendant's  
 10 conduct, communications and actions, if any, were privileged.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 6. As a separate, affirmative defense, assuming *arguendo* that this  
 13 Defendant violated a statute alleged in the complaint, which presupposition the  
 14 Defendant denies, such violation was not intentional and resulted from a bona fide  
 15 error, notwithstanding the maintenance of procedures reasonably adapted to avoid  
 16 any such error.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 7. As a separate, affirmative defense, Defendant alleges that Plaintiff is  
 19 barred from any recovery against this answering Defendant by the doctrine of laches.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 8. As a separate, affirmative defense, Defendants allege that its conduct,  
 22 communications and actions, if any, were privileged pursuant to Civil Code  
 23 §1785.32.

24 **NINTH AFFIRMATIVE DEFENSE**

25 9. As a separate, affirmative defense, Defendant allege that they, at all  
 26 times alleged in the complaint, maintained reasonable procedures created to prevent  
 27 any type of intentional violations of the Fair Debt Collection Practices Act.

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## **TENTH AFFIRMATIVE DEFENSE**

10. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendants deny, then Plaintiff's damages are limited by 15 U.S.C. §1692(k)(a)(1), §1692(k)(a)(2)(A), §1692(k)(a)(3) and 15 U.S.C. § 1692(k)(b)(1).

## ELEVENTH AFFIRMATIVE DEFENSE

11. As a separate, affirmative defense, Defendant alleges that its conduct, communications and actions, if any, were privileged pursuant to 15 U.S.C. §1692(k)(c).

## **TWELFTH AFFIRMATIVE DEFENSE**

12. As a separate, affirmative defense, Defendant alleges that the alleged actions of Defendant were proper and did not violate any provisions of Cal. Civ. Code § 1788, et seq.

## THIRTEENTH AFFIRMATIVE DEFENSE

13. As a separate, affirmative defense, Defendant alleges that its actions were privileged pursuant to Federal and State Common Law.

## FOURTEENTH AFFIRMATIVE DEFENSE

14. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, Plaintiff failed to mitigate damages.

## **FIFTEENTH AFFIRMATIVE DEFENSE**

15. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendants deny, Defendant's alleged acts or omissions were not a proximate cause of said damages.

## SIXTEENTH AFFIRMATIVE DEFENSE

16. As a separate, affirmative defense, Defendant alleges that Plaintiff lacks standing.

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## SEVENTEENTH AFFIRMATIVE DEFENSE

17. As a separate, affirmative defense, Defendant alleges that Plaintiff's entire action, or the individual causes of action in Plaintiff's complaint are barred by the doctrine of preemption.

WHEREFORE, Defendant prays:

1. For a judgment in favor of Defendant, and against Plaintiff, and that Plaintiff take nothing by reason of said Complaint;

2. That Defendant be awarded costs of suit herein and such other further relief as the Court deems just.

DATED: May 29, 2008

STEPHEN H. TURNER  
BRIAN SLOME  
LEWIS BRISBOIS BISGAARD & SMITH LLP

By

Stephen H. Turner  
Brian Slome  
Attorneys for DEFENDANT PENTAGROUP  
FINANCIAL LLC.

CERTIFICATE OF MAILING

I certify that on the 29<sup>th</sup> day of May 2008, I electronically transmitted **DEFENDANT PENTAGROUP LLC's ANSWER TO PLAINTIFF'S COMPLAINT** to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Fred W. Schwinn  
Consumer Law Center, Inc.  
12 South First Street, Ste. 416  
San Jose, California 95113-2404

By: /s/ Brian Slome

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